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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

4 JOHN TRUJILLO,

5 Plaintiff,

6 v. No. 15-CV-00901 JB-WPL

7 RIO ARRIBA COUNTY ex rel, RIO
8 ARRIBA COUNTY SHERIFF'S
9 DEPARTMENT, DEPUTY GILBERT
10 ATENCIO, in his individual
capacity, and LIEUTENANT
MARVIN ARMIJO, in his
individual capacity,

11 Plaintiff.

12

13 DEPOSITION OF MURRAY CONRAD

May 2, 2016

1:10 p.m.

15 500 4th Street, Suite 105
Albuquerque, New Mexico 87102

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18 PURSUANT TO THE FEDERAL RULES OF CIVIL
PROCEDURE, this deposition was:

TAKEN BY: JAMES P. SULLIVAN
21 ATTORNEY FOR DEFENDANTS

22

23 REPORTED BY: PAUL BACA, CCR #112
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1 just throwing at it every once in a while because
2 you don't smell anything, then it's not permissible.

3 So my statement was that there's no
4 indication anywhere until the bitter end that anyone
5 even smelled alcohol.

6 There was no -- no indication anywhere
7 that he had bloodshot watery eyes or slurred speech
8 until the very end.

9 That's just what I'm pointing out.

10 Q. (By Mr. Sullivan) Okay. I understand
11 that.

12 But would you agree with me that if you're
13 trying to find out if someone has been drinking, one
14 of the ways you can is you can actually smell it, as
15 an officer?

16 A. That is correct.

17 Q. And that might confirm he's been drinking,
18 right?

19 A. That would definitely confirm that.

20 Q. And another way you might find out if he's
21 been drinking, if the guy is honest enough to say, I
22 have been drinking.

23 A. Sure.

24 Q. And that would be an indication of
25 drinking?

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1 conducted, right?

2 A. We were talking about the lack of original
3 indicators.

4 Q. Right. But we talked --

5 A. Yes.

6 Q. But we did agree that one beer is an
7 indicator, and it may be permissible for the
8 officer, based upon that, to take it to the next
9 step, and let's do field sobriety tests, correct?

10 A. Yes.

11 Q. Okay. Let's get to the field sobriety
12 test part here.

13 A. All right.

14 Q. Do you have any criticisms as to that?

15 A. I do. And get ready. Here we go.

16 Q. Okay.

17 A. So first of all, Mr. Trujillo is told to
18 exit the vehicle.

19 The indications from Deputy Atencio was
20 that he had a hard time getting out and had to hold
21 on to the car for balance.

22 Now normally, those would be real good
23 indicators of possible impairment. But the
24 immediate factors that I saw was the age of
25 Mr. Trujillo, his weight. And those are immediate

1 factors that have to be considered before
2 administering the sobriety tests.

3 Now, you noticed I didn't say standardized
4 sobriety tests.

5 Q. Okay.

6 A. There are lots of divided attention tests
7 that you can administer to somebody who is
8 overweight.

9 And one of the indicators that I put in
10 there from Dr. Burns, in the Southern California
11 Institute, was somebody who is 65 years old or
12 older, or someone who is overweight, may have a hard
13 time passing the standardized field sobriety tests
14 sober.

15 Q. Okay.

16 A. So weight and age are something that you
17 definitely have to consider.

18 Q. Okay. And what are the alternatives,
19 then, of doing a field sobriety test if somebody is
20 68 and they're heavy or overweight?

21 A. Well, you're still going to do a field
22 sobriety test, but it just won't be the
23 standardized.

24 Q. What is that?

25 A. Which is the horizontal gaze nystagmus,

1 A. -- arthritic, you know. Those are the
2 things that you, as the officer, you've got to look
3 for.

4 Q. Right.

5 A. And there's no indication of that either.

6 Q. Right. Okay.

7 A. All right.

8 Q. And also the eye nystagmus -- I can never
9 pronounce that correctly.

10 A. That is correct. It's a horizontal gaze
11 nystagmus.

12 Q. Right. And that is not impaired by you
13 being overweight, is it?

14 A. No.

15 Q. Nor by being 60 -- mid 60s, is it?

16 A. That is -- that is correct.

17 Q. Okay. And he failed that test, correct?

18 A. The -- the deputy indicates that he had
19 all six indicators on the nystagmus, correct.

20 Q. Okay. All right.

21 And -- okay. Let's continue on.

22 A. All right. So what you've marked as
23 Exhibit 1, and through the interviews that I've done
24 with Mr. Trujillo, Mr. Trujillo asked to retrieve
25 his walking cane from the vehicle.

1 But what it doesn't indicate is that
2 Mr. Trujillo swayed, if he was unbalanced during
3 this test.

4 Q. Okay.

5 A. Just pointing that out.

6 Q. Okay.

7 A. Which is a dramatic contrast from the exit
8 sequence of Mr. Trujillo.

9 Q. Let's talk about the gaze eye nystagmus
10 test here on page --

11 A. Okay.

12 Q. -- they're not numbered, but it looks like
13 page 4 of your report.

14 A. Okay.

15 Q. If you want to turn to that.

16 A. (Witness complies.)

17 Q. So you don't have any reason to doubt that
18 the six indicators -- exhibited all six indicators,
19 do you?

20 A. No.

21 Q. Okay.

22 A. And here's why. Diazepam and the
23 metabolite of Diazepam -- and it's basically Valium,
24 the brand name -- is a central nervous system
25 depressant. Alcohol, beer, is a central nervous

1 A. It is an indicator that, yeah, that
2 something is causing the nystagmus, and that could
3 be -- it could be the central nervous system
4 depressant. It could be PCP. It -- I mean, there's
5 so many different things that cause impairment.

6 And...

7 Q. And it could be alcohol?

8 A. Sure. Absolutely.

9 Q. And especially it could be alcohol if the
10 guy has admitted to you that he had been drinking?

11 A. Sure.

12 Q. Okay. Let's go down the same page,
13 Mr. Conrad, at the bottom paragraph where it begins:
14 "I interviewed John Trujillo by phone."

15 A. Uh-huh.

16 Q. Mr. Trujillo tells you he suffers from
17 diabetic neuropathy?

18 A. Correct.

19 Q. Do you know what that is?

20 A. I do. My mother suffered from the same
21 thing. It causes nerve damage. So you could either
22 have total numbness of a limb to shooting pains,
23 burning.

24 Q. So this is a complication of diabetes,
25 correct?

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1 A. He is waiting on a kidney transplant, but
2 he can't do that because he's got a blocked artery
3 to his heart.

4 Q. Okay. You put kidney transplant, waiting
5 for a kidney transplant, in your report here.

6 Would you agree with me that it's also
7 probably not good to drink alcohol if you have what
8 are obviously serious kidney issues?

9 MS. HACSI: Object to form.

10 Q. (By Mr. Sullivan) Would you agree with
11 that?

12 A. I would tend to agree with that.

13 Q. It could compromise your metabolism,
14 right?

15 A. Sure. Sure.

16 Can we go back on the same page?

17 Q. Sure.

18 A. All right. So Deputy Atencio finally
19 ascertains -- or Mr. Trujillo provided the
20 information that he had serious knee problems.

21 Q. Right.

22 A. Deputy Atencio then says, Well, let me
23 have you walk, and walk back.

24 And from that short number of steps -- I
25 don't know how many it was -- he determined that

1 Mr. Trujillo was then capable of performing the
2 standardized field sobriety tests.

3 And there again, he's not a doctor.
4 That's not something that we've ever trained, as
5 part of the standardized field sobriety tests, or
6 anything else, for you to make that determination,
7 especially when somebody has indicated that they
8 have injuries, illnesses. You don't know what
9 the -- you don't know how bad that problem is and
10 how that would affect your tests.

11 Now the tests are standardized on people
12 that are not injured, they're not old, they're not
13 overweight.

14 Q. Right.

15 A. And so you get your pass or fail clues
16 from the standardization.

17 So even though he -- Deputy Atencio
18 attempted to give the standardized tests, as he was
19 trained, I'm assuming, there's no standardization
20 there because of the reported injury to the knees.

21 Q. And correct me if I'm wrong. But if one
22 has a 30 percent impairment of the knee or a knee
23 injury, it probably wouldn't affect this highly
24 reliable test you talked about, the eye gaze
25 nystagmus test, would it?